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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
NICK J. WHITAKER,)
)
Defendant.)

Case No. CR 08-0184 MAG

**DECLARATION OF TIMOTHY
O'CONNELL IN SUPPORT OF
UNITED STATES' MOTION FOR
SUMMONS**

I, Timothy O'Connell, hereby declare as follows:

1. I am a law clerk in the United States Attorney's Office assigned to the prosecution of this case. I have received the following information from United States Park Police Officers employed by the Department of the Interior and from reports and other documents provided to me by the National Park Service.

2. On August 26, 2007, at approximately 12:34 p.m. United States Park Police Officer Halvorson ("Officer Halvorson") smelled the odor of burnt marijuana while on foot patrol near Battery Black Point, Fort Mason, in the Northern District of California.

3. Officer Halvorson saw a male subject, later identified as the defendant, Nick J. Whitaker

1 (“Whitaker” or “the defendant”). Officer Halvorson asked Whitaker if he had been smoking
2 marijuana. Whitaker stated that he had not but that another person had been smoking marijuana
3 and left the area. Whitaker was the only person Officer Halvorson observed in the area.

4 4. Officer Halvorson observed that Whitaker appeared to be clutching a box with both his
5 hands in a large, front sweatshirt pocket. Officer Halvorson asked again if the defendant had
6 been smoking marijuana, and Whitaker replied, “No, I was smoking crack.”

7 5. Pursuant to the admission that the defendant was smoking crack, the suspicious clutching
8 of a box in the sweatshirt pocket and the smell of burnt marijuana, Officer Halvorson searched
9 Whitaker.

10 6. In Whitaker’s front sweatshit pocket, Officer Halvorson found a clear plastic bag
11 containing ten 2.5" x .25" strips of white paper and a glass stem pipe containing suspected
12 narcotics residue. Identification Technician Rawles arrived on scene to assist Officer Halvorson.

13 7. Officer Halvorson asked Whitaker what the white strips of paper were, and Whitaker
14 stated “I don’t know.” Officer Halvorson then informed the defendant that he would be testing
15 the paper for Lysergic Acid Diethylamide (“LSD”). Officer Halvorson asked Whitaker a second
16 time what the white strips of paper were, and Whitaker replied that they were “LSD.”

17 8. Officer Halvorson placed Whitaker under arrest for violating Title 21 of the United States
18 Code Section 844 for possession of LSD. Officer Halvorson transported Whitaker to the 1217
19 Ralston Avenue police station.

20 9. Officer Halvorson tested a portion of the suspected LSD using NIK test D. The test
21 returned a presumptive positive result.

22 10. On October 16, 2007, the DEA’s Western Regional Lab tested the suspected LSD taken
23 from Whitaker. The result was positive for the presence of LSD.

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1 11. I declare under penalty of perjury according to the laws of the United States that the
2 foregoing is true and correct to the best of my knowledge and belief.

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5 Executed April 2, 2008 at San Francisco, California.

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10 _____/s/
11 TIMOTHY A. O'CONNELL
12 Law Clerk
13 United States Attorney's Office
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